TORT LIABILITY OF A VENDOR OF CHATTELS TO OTHERS THAN HIS VENDEE. — The advisability of holding the negligent maker or vendor of a chattel liable to some person other than the vendee has given rise to a confused list of decisions. It seems fairly settled, however, that a person not privy to the contract cannot recover for an injury caused him by the seller's negligence, unless the article sold is one dangerous to human life.[1] This doctrine rests upon the ground that in the case of ordinary articles there is no duty to any but the vendee, while in the case of dangerous articles there is a duty towards all who may reasonably be expected to use them. It might be urged that the danger is reason for greater care rather than wider liability, and that there is a like duty owing in all cases, whether the articles be dangerous or not; but such a theory finds, unfortunately, frail support, and much of the authority commonly cited in its favor has gone upon the ground that the defendant sold not merely with negligence, but with actual knowledge of the defect.[2]

Accepting the law as it apparently stands, the crucial point is to decide what articles are dangerous to life. It has necessarily been held that poison [3] is dangerous; while a stage-coach,[4] a fly-wheel,[5] and a steam-boiler [6] are not. On the other hand a scaffolding has twice been held a dangerous article,[7] and it is difficult to see why a fly-wheel or a steam-boiler is intrinsically safer than a scaffolding, or why any of them is not as dangerous as food the negligent preparation of which rendered a seller liable at the suit of the vendee's guest.[8]

Upon this perplexity some light is thrown by two decisions lately reported. In the first, a land-roller defectively constructed by the defendant company was resold to the plaintiff, who was injured owing to the defect. The New York court gave judgment for the defendant, on the ground that a roller, though it may be dangerous if defective, is not inherently so. *Kuelling* v. *Roderick Lean Mfg. Co.*, 84 N. Y. Supp. 622. In the second case the Michigan court under similar circumstances decided that diseased hogs were dangerous articles, and allowed recovery by the sub-vendee. *Skinn* v. *Reutter*, 97 N. W. Rep. 152. In both cases there was knowledge of the defect, but the courts seem to have preferred to decide upon the common principles of negligence, rather than on that particular fact. The cases are therefore useful as presenting two distinct tests of danger.

The test applied by the New York court is the nature of the article in its ordinary state; the test of the Michigan court is the nature of the article in its defective state. The latter test seems preferable. First, it is more accurate, since a seller is liable because he negligently endangers the public, and this depends not on what the article he sells would be if in proper condition, but upon what it actually is. Secondly, it is the more convenient, for it greatly reduces the difficulty in deciding what are dangerous articles. Lastly, the Michigan test is the more just, since it tends to broaden the scope of the existing rule, which is, in any event, too narrowly restricted.

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[1] Winterbottom *v.* Wright, 10 M. & W. 109; Thomas *v.* Winchester, 6 N. Y. 397.
[2] Lewis *v.* Terry, 111 Cal. 39.
[3] Thomas *v.* Winchester, *supra.*
[4] Winterbottom *v.* Wright, *supra.*
[5] Loop *v.* Litchfield, 42 N. Y. 351.
[6] Losee *v.* Clute, 51 N. Y. 494.
[7] Coughtry *v* Globe Woolen Co., 56 N. Y. 124; Devlin *v.* Smith, 89 N. Y. 470.
[8] Bishop *v.* Weber, 139 Mass. 411.